<u>REMARKS</u>

In the Office Action mailed December 13, 2006, Claims 1-16, 23-36, and 40 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Saias (U.S. Patent Application Publication No. 2003/0014379) in view of Defarlo (U.S. Patent Application Publication No. 2002/0004774), and further in view of Kane (U.S. Patent No. 6,317,728). Claims 17-22, 37-39, and 41-42 were rejected under 35 U.S.C. § 102(e) as being anticipated by Saias. Applicant traverses the claim rejections and respectfully requests reconsideration and allowance. Claims 1-42 are pending in the application.

<u>Claims 1-16, 23-36, and 40 Are Patentable Over Saias, Defarlo, and Kane</u>

Claim 1 recites a method of facilitating trading that includes:

- automatically capturing a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants, and wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller,

- automatically determining, by a software process executing on a computer, whether each of the market participants has gained money or lost money from the trade in which they engaged, and

- automatically updating, by the software process, a preference rating for each of the market participants based on the determination of whether money was gained or lost from the trade, wherein the preference rating for each market participant is descriptive of the market participant as a trading party.

As a preliminary matter, applicant does not concede that Saias or Defarlo are prior art to the present application. While applicant submits that the claims pending in the present application are distinguishable over Saias and Defarlo (as well as Kane), applicant reserves the option to antedate the Saias and Defarlo references under 37 C.F.R. § 1.131.

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The Office Action (page 6) acknowledged that Saias fails to disclose all of the elements of Claim 1. The Office Action thereafter relied on Defarlo and Kane as overcoming the deficiency of disclosure in Saias. Applicant has carefully considered the disclosures of Defarlo and Kane and submits that Defarlo and Kane are deficient, along with Saias, in disclosing the elements of Claim 1. Accordingly, the rejection of Claim 1 should be withdrawn.

Defarlo was cited for allegedly disclosing the element of "automatically determining, by a software process executing on a computer, whether each of the market participants has gained money or lost money from the trade in which they engaged." See page 6 of the Office Action, citing in particular paragraphs [0072] to [0800] of Defarlo. Applicant has reviewed the disclosure of Defarlo and respectfully disagrees with the characterization of Defarlo as set forth in the Office Action. At best, Defarlo describes a system that calculates certain trade statistics for a trader on *only one side* of a trade. Attention should be given at least to paragraph [0010] as well as paragraphs [0017] and [0018] of Defarlo, where Defarlo explains:

> It is an object of the present invention to provide a data analysis system which imports technical and fundamental financial data and correlates that data to the trading history of *an individual trader*.
>
> . . .
>
> The above stated objects are met by a new and improved data analysis system to allow traders of equities and other financial instruments to keep track of *their* trading history and to display a trade profile of *their* trading behavior. Trade results are analyzed by correlating trade transactions records with concurrent market conditions, categorizing the conditions, and appending condition data to the trade transaction record. The results are then displayed to *the trader* in the form of pivot tables and graphs.
>
> The new and improved trader data analysis system acquires transaction data from *a trader*'s brokerage or clearing firm and records the information about the state of a financial instrument, the industry group which the financial instrument is part of, and the exchange the financial instrument is traded on. The transaction data is turned into trade records including the open positions of *the trader*. For each trading record, the data analysis system references external data necessary for analysis calculations, i.e. technical and fundamental data. The system then calculates the value of a number of technical indicators, sorts the results

into categories and associates the results to the trade record. Trade specific information is then calculated, sorted into categories and associated to trade records. Lastly, the system calculates certain performance data of the trader, for example, various profit and loss (P&L) positions. After the analysis is finished, the system of the subject invention takes the trade records and restructures the data into a standard multidimensional database. This allows correlations of profit and loss, win ratio and a number of other measures to be made against factors such as momentum, volatility, sentiment, etc. (Emphasis added.)

In contrast, Claim 1 recites "automatically determining, by a software process executing on a computer, whether **each of the market participants** has gained money or lost money from the trade in which they engaged." (Emphasis added.) To the extent Defarlo purports to disclose a software process, Defarlo's process does not automatically determine whether each of the market participants in a trade has gained money or lost money from the trade. At most, Defarlo's process purports to calculate trade information for *an individual trader* on only one side of a trade. Even if one considers, for the sake of argument only, that the different parties to a trade separately execute Defarlo's process for their respective side of the trade, the result remains that the process only computes statistics for the individual trader on the particular side of the trade. By any reading of Defarlo, it cannot be stated that Defarlo discloses "automatically determining, by a software process executing on a computer, whether each of the market participants has gained money or lost money from the trade in which they engaged," especially "wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller," as recited in Claim 1. This deficiency of Defarlo is not overcome by the disclosure of Kane, as explained further below. The Office Action already acknowledged the deficiency of Saias in this regard. For at least this reason, Claim 1 is patentable over Saias, Defarlo, and Kane, whether considered alone or in any combination.

The Office Action (page 6) cited Kane for allegedly disclosing the element of "automatically updating, by the software process, a preference rating for each of the market participants based on the determination of whether money was gained or lost from the trade,

wherein the preference rating for each market participant is descriptive of the market participant as a trading party." Applicant respectfully disagrees. As discussed by applicant in response to a prior Office Action, Kane discloses a computerized system with "agents" that provide trading *suggestions* to <u>a trader on one side of a trade</u> to help the trader make a future decision whether to enter into a trade. Depending on available information, the agents make a buy or sell suggestion to the trader based on the respective rules that they represent (see Col. 5, lines 5-15, of Kane). A suggestion from each agent to the trader is considered to be a vote for a possible action that the trader may wish to undertake (see Col. 5, lines 37-48, of Kane). Depending on the outcome of the votes from the various agents, the trader may decide to create and send an order to a marketplace (see Col. 5, lines 49-55, of Kane).

Notably, *the agents disclosed by Kane are <u>not</u> "<u>market participants</u>,"* as claimed in Claim 1. As recited in Claim 1, the market participants "are each parties to the trade, . . . wherein one of the market participants is engaged in the trade as a buyer and the other of the market participants is engaged in the trade as a seller." As further recited in Claim 1, "the trade results in an exchange of items between the market participants."

The agents taught by Kane are not parties to a trade nor do they engage in a trade. The agents only provide information to a trader, or market participant, on one side of a trade. Furthermore, Kane's agents do not exchange items with other agents as a result of a trade. It is simply incorrect for the Office Action to consider Kane's agents as constituting "market participants" as claimed in Claim 1.

This deficiency of Kane is not overcome by the disclosure of Saias and Defarlo, as explicitly conceded in the Office Action (page 6). For at least this additional reason, Claim 1 is patentable over Saias, Defarlo, and Kane, whether considered alone or in any combination.

Furthermore, Kane's system only keeps track of its own side (buy or sell) of a trade. Each trader only knows whether its own side has gained or lost money from the trade; there is no tracking of whether the contra side of the trade gained or lost money from the trade.

Accordingly, Kane does not teach "automatically determining . . . whether <u>each of the market participants</u> has gained money or lost money from the trade in which they engaged."

To the extent a trader using Kane's system, at the conclusion of the trade, updates "merit quotients" to rate its own agents (according to the agents' prior suggestions to the trader to buy or sell), these merit quotients are not "preference rating[s] for each of the market participants" as recited in Claim 1. For at least this further additional reason, applicant respectfully submits that Claim 1 is patentable over Saias, Defarlo, and Kane, whether considered alone or in any combination.

In summary, where Saias, Defarlo, and Kane individually and collectively fail to teach or suggest all of the elements of Claim 1, there is no combination of the references that renders Claim 1 obvious. Claim 1 should be allowed.

Claims 2-16, which incorporate all the features of Claim 1 by dependence, are also patentable over Saias, Defarlo, and Kane. Each of Claims 2-16 is further distinguished over Saias, Defarlo, and Kane for the additional subject matter they recite and should be allowed. For example, to the extent Saias was cited as a basis for rejecting the claims dependent on Claim 1, Saias teaches nothing about "a preference rating for each of the market participants . . ., wherein the preference rating for each market participant is descriptive of the market participant as a trading party." Accordingly, Saias does not support a rejection of the Claims 2-16 inasmuch as they further recite elements pertaining to "the preference rating" recited in Claim 1.

Claim 23 recites a system for facilitating trading that includes:

- a computer having a processing component configured to automatically capture a trade between two market participants that are each parties to the trade, wherein the trade results in an exchange of items between the market participants, and wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade,

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- wherein the processing component is further configured to automatically determine whether each of the market participants, as a party to the trade, has gained money or lost money from the trade and to automatically update a preference rating for each of the market participants based on the determination of whether money was gained or lost from the trade, the preference rating for each market participant being descriptive of the market participant as a trading party.

Applicant has considered the disclosures of Saias, Defarlo, and Kane and respectfully submits that the none of cited references (considered alone or combined) teaches the system recited in Claim 23, particularly in view of the comments provided above relative to Claim 1. For at least this reason, Claim 23 should be allowed.

Claims 24-36, which incorporate all the features of Claim 23 by dependence, are also patentable over Saias, Defarlo, and Kane. Furthermore, each of these dependent claims is patentably distinguished over Saias, Defarlo, and Kane for the additional subject matter they recite. For example, to the extent Saias was cited as a basis for rejecting the claims dependent on Claim 23, Saias teaches nothing about "a preference rating for each of the market participants . . ., the preference rating for each market participant being descriptive of the market participant as a trading party." Accordingly, Saias does not support a rejection of the Claims 24-36 inasmuch as they further recite elements pertaining to "the preference rating" recited in Claim 23. For at least these reasons, Claims 24-36 should be allowed.

Claim 40 is dependent on Claim 37 and thus incorporates all of the elements of Claim 37, discussed below. For at least this reason, and for the additional subject matter it recites ("the executable instructions further cause the computer to determine whether the first or second market participant gained money or lost money from the trade and to provide said determination as information to the preference rating updating process"), Claim 40 should be allowed.

<u>Claims 17-22, 37-39, and 41-42 Are Patentable Over Saias</u>

The Office Action (page 2) rejected Claims 17-22, 37-39, and 41-42 as being anticipated by Saias. Applicant has considered the comments provided in the Office Action, and respectfully submits that the claim rejections based on Saias are in error.

Claim 17 recites, in part, a method of "facilitating a trade between the first trading process and a second trading process, wherein the *second trading process* is unaware of the identity of the first trading process and yet *is able to obtain, from the market process, a preference rating for the first trading process*." Saias explicitly teaches away from this claim element.

To understand this point, as explained in applicant's prior response, it is first necessary to recognize that the trading "preferences" of Saias are directed to <u>what</u> is being traded, not to <u>who</u> is on the other side of the trade. Each of the parties can submit various terms to be negotiated in order to make a trade. Saias' trading terms are characteristics describing the items to be traded (i.e., <u>what</u> is being traded), such as price and quantity; the trading terms are <u>not</u> "a preference rating for the first trading process," as claimed in Claim 17, "wherein the preference rating is descriptive of the first trading process as a trading party." The Office Action provided no explanation to the contrary.

Furthermore, according to Saias, the trading terms form multi-dimensional preference surfaces (see paragraph [0320]), which are <u>not</u> disclosed to the other party in the trade. In paragraph [0317] of Saias (cited in the Office Action at page 3), Saias teaches "*none of the surfaces will be available for inspection or analysis by any other market participant, or any third party*." This does not teach or suggest the subject matter claimed in Claim 17. Quite differently, in Claim 17, the second trading process (as a market participant) "is able to obtain, from the market process, a preference rating for the first trading process."

Since Saias fails to teach or suggest all of the elements of Claim 17 and the Office Action has provided no explanation to the contrary, applicant submits that Saias does <u>not</u> anticipate

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Claim 17 and thus cannot support a *prima facie* basis to reject Claim 17 under Section 102(e). Claim 17 is in condition for allowance.

Claim 18 recites a method of facilitating trading that includes:

- automatically providing information to a preference rating updating process, and
- automatically deciding, by a software process executing on a computer, the software process being a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party,
- wherein one of the market participants is a buyer in the trade and the other of the market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants.

Saias fails to teach or suggest all of the elements of Claim 18, including a preference rating updating process as claimed. Saias also does not teach or suggest "a software process being a first market participant" that decides "whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party," and wherein "the trade result[s] in an exchange of items between the market participants."

With respect to Claim 18 (as well as Claim 17), the Office Action cited paragraphs [0310] to [0311] and paragraphs [0317] to [0318] of Saias, but these paragraphs teach nothing about a first market participant deciding whether to trade with a second market participant based on a preference rating of the second market participant. *In fact, Saias teaches the contrary.* The automated market (AM 108) taught by Saias receives trading terms from different parties and arranges trades while keeping information about the parties private. In the present application, the first market participant is given the preference rating (which is

"descriptive of the second market participant as a trading party") so that first market participant can determine whether to trade with the second market participant based on the preference rating.

Furthermore, the preference rating in Claim 18 is directed to *who* is involved in a trade, rather than *what* is being traded. On the other hand, at paragraph [0318] of Saias, Saias explains that the trading terms, or "preferences" are terms for negotiation and include price, quantity, and other characteristics based on *what (i.e., the items)* is being traded. Importantly, according to Saias, trading terms or "preferences" obtained from one market participant are <u>not</u> shared with any other market participant. Simply put, the teachings of Saias are contrary to that which is taught and claimed in Claim 18.

For at least the reasons discussed above, Claim 18 is patentably distinguished over Saias and should be allowed. Claims 19-22, which depend from Claim 18, incorporate all of the features of Claim 18. Accordingly, each of these dependent claims is patentably distinguished over Saias for at least the reasons discussed above. Claims 19-22 also present additional subject matter that defines the claims over Saias. For at least these reasons, Claims 19-22 should also be allowed.

Claim 37 recites a computer-accessible medium having executable instructions stored thereon that, when executed, cause a computer to:

- automatically provide information to a preference rating updating process, and
- automatically decide, as a first market participant, whether to trade with a second market participant based on a preference rating of the second market participant determined by the preference rating updating process, the preference rating being descriptive of the second market participant as a trading party,
- wherein one of the first and second market participants is a buyer in the trade and the other of the first and second market participants is a seller in the trade, the trade resulting in an exchange of items between the market participants.

Applicant submits that Saias fails to teach a system as recited in Claim 37, particularly in view of the comments provided above. For at least this reason, Claim 37 should be allowed.
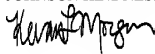
Claims 38, 29, 41, and 42, which incorporate all the features of Claim 37 by dependence, are also patentable over Saias. Moreover, each of these dependent claims is patentably distinguished over Saias for the additional subject matter they recite. Claims 38, 29, 41, and 42 should thus be allowed.

<div align="center">CONCLUSION</div>

Claim 1-42 are all in patentable condition. Allowance of the application at an early date is requested. Should any remaining issues need resolution prior to allowance, the Examiner is invited to directly contact the undersigned counsel to discuss these issues.

Respectfully submitted,

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